

Internal Revenue Service

Department of the Treasury
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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:02

PLR-107270-12

Date:

September 28, 2012

LEGEND

Distributing =

Controlled 1 =

Controlled 2 =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Shareholder 5 =

Shareholder 6 =

Business A =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

f =

g =

h =

Dear :

This letter ruling responds to your February 13, 2012, request, submitted by your authorized representative, for rulings on certain federal income tax consequences of a proposed transaction. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction (defined below): (i) satisfies the business purpose requirements of Treas. Reg. § 1.355-2(b); (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions)

pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Distributing, a State X corporation, was organized as a subchapter C corporation on Date 1. Distributing was authorized to transact business in State Y on Date 2. Distributing elected to be treated as a subchapter S corporation for federal income tax purposes effective Date 3. Distributing has one class of common stock authorized of which a shares are outstanding and owned by Shareholder 1 (b%), Shareholder 2 (c%) Shareholder 3 (b%), Shareholder 4 (c%), Shareholder 5 (f%) and Shareholder 6 (g%). Distributing has submitted financial information indicating that Business A had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. Distributing represented that payments were made to at least h employee for services rendered as an employee of Distributing with regard to Business A.

PROPOSED TRANSACTION

For what are represented to be valid business reasons, Distributing has proposed the following transactions (the "Proposed Transaction"):

- (i) Distributing will form Controlled 1 and Controlled 2 (individually, "Controlled" and collectively, the "Controlled Corporations") and contribute approximately one-third of its net assets to each of Controlled 1 (the "Controlled 1 Contribution") and Controlled 2 (the "Controlled 2 Contribution") in exchange for the common stock of the corporations (collectively, the "Contribution").
- (ii) Distributing will redeem the common shares owned by Shareholder 1 and Shareholder 2 in return for the shares of Controlled 1 (the "Controlled 1 Distribution").
- (iii) Distributing will redeem the common shares owned by Shareholder 3 and Shareholder 4 in return for the shares of Controlled 2 (the "Controlled 2 Distribution" and together with the Controlled 1 Distribution, the "Distribution").

REPRESENTATIONS

Distributing makes the following representations in connection with the Proposed Transaction:

- (a) The fair market value of the Controlled Corporation's stock to be received by each shareholder will be approximately equal to the fair market value of the Distributing stock surrendered by the shareholder in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by a Distributing Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Distributing is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its business.
- (e) The distribution of the stock of Controlled 1 and Controlled 2 is carried out for the following corporate business purpose: to settle ongoing differences of opinion with regard to the development and management of Distributing's properties. The distribution of the stock of Controlled 1 and Controlled 2 is motivated, in whole or substantial part, by this corporate business purpose.
- (f) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (g) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 or Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 or Controlled 2 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (h) The total fair market value of the assets transferred to each Controlled in the Contribution will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (i) The liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (j) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Contribution.
- (k) No inter-corporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (l) Payments made in connection with all continuing transactions, if any, among Distributing, Controlled 1 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (m) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (n) Distributing, Controlled 1 and Controlled 2 will each pay their own expenses, if any, incurred in connection with the transaction.
- (o) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (p) Immediately after the transaction (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3), in the stock of Distributing, Controlled 1 or Controlled 2 who did not hold such an investment immediately before the transaction or (ii) neither Distributing, Controlled 1 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

RULINGS

Based solely on the information submitted and the representations made, we rule as follows:

- (1) The Controlled 1 Contribution, together with the Controlled 1 Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled 1 will each be “a party to “a reorganization” under section 368(b).
- (2) The Controlled 2 Contribution, together with the Controlled 2 Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled 2 will each be “a party to a reorganization” under section 368(b).
- (3) Distributing will recognize no gain or loss on the Contribution. Sections 357(a) and 361(a).
- (4) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder 1 or Shareholder 2 on the receipt of the Controlled 1 stock in the Distribution. Section 355(a)(1).
- (5) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder 3 or Shareholder 4 on the receipt of the Controlled 2 stock in the Distribution. Section 355(a)(1).
- (6) Neither Controlled 1 nor Controlled 2 will recognize gain or loss in the Contribution. Section 1032(a).
- (7) Controlled 1’s and Controlled 2’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution. Section 362(b).
- (8) Controlled 1 and Controlled 2’s holding period for each asset received from Distributing will include the period during which Distributing held (or was deemed to hold) that asset. Section 1223(2).
- (9) No gain or loss will be recognized by Distributing upon its distribution of Controlled 1 and Controlled 2 stock in the Distribution. Section 361(c).
- (10) The holding period of the stock received by a Distributing shareholder in the Distribution will include the holding period of the Distributing Common Stock with respect to which the Distribution will be made, provided the Distributing

Common Stock is held as a capital asset on the date of the Distribution. Section 1223(1).

- (11) Earnings and profits will be allocated among Distributing, Controlled 1 and Controlled 2 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
- (12) The basis of the Controlled 1 stock in the hands of Shareholder 1 and Shareholder 2 immediately after the Distribution will be the same as Shareholder 1's and Shareholder 2's respective basis in the Distributing stock held immediately before the Distribution. Section 358(a)(1).
- (13) The basis of the Controlled 2 stock in the hands of Shareholder 3 and Shareholder 4 immediately after the Distribution will be the same as Shareholder 3's and Shareholder 4's respective basis in the Distributing stock held immediately before the Distribution. Section 358(a)(1).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); (iii) whether the Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii); (iv) whether Distributing or Controlled otherwise meets the requirements of a subchapter S corporation under section 1361.

PROCEDURAL MATTERS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer Branch 2
Office of Associate Chief Counsel (Corporate)

cc: